IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

CRP.No. 450 of 2005

(*AGAINST THE ORDER DATED 07/08/2004 IN EP 345/1997 IN LAR.45/1992 of II Addl. .SUB COURT,THRISSUR)*

REVN. PETITIONER/DECREE HOLDER:

SANKARANEZHUTHASSAN,
S/O.VADASSERY BALAKRISHNAN EZHUTHASSAN,
AVANNUR VILLAGE, THRISSIUR TALUK,
REPRESENTED BY POWER OF ATTORNEY HOLDER,
BALAKRISHNAN EZHUTHASSAN, AVANNUR VILLAGE AND
DESOM, THRISSUR TALUK.

BY ADV. SRI.N.P.SAMUEL

RESPONDENT/JUDGMENT DEBTOR. :

KERALA STATE,
REPRESENTED BY THE DEPUTY COLLECTOR,
(LAND ACQUISITION), THRISSUR.

BY GOVERNMENT PLEADER SHRI BASANT BALAJI.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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C.R.P. No. 450 OF 2005

.....

Dated this the 24th August, 2007

O R D E R

The decree holder is the revision petitioner. He challenges the order dated 7th August, 2004 in E.P.No. 345 of 1997 in L.A.R.No.45 of 1992 on the file of the court of the Subordinate Judge, Thrissur.

2. By the order impugned, the court below accepted the statement filed by the judgment debtor. The statement filed by the decree holder was not accepted on the ground that interest on solatium is also included in that statement, when the decree does not provide for interest on solatium.

3. It is true that the decree does not specifically provide for payment of interest on solatium. In view of the decision of the Supreme Court in **Sundar vs. Union of India (AIR 2001 SC 3516)**, interest is payable on solatium as well.

4. The question arising for consideration is whether interest on solatium is payable when the decree does not provide for the same. The said question was considered by the Supreme Court in **Gurpreet Singh vs. Union of India ([2006] 8 S.C.C. 457).** It was held in paragraph 54 as follows:

> *"One other question also was sought to be raised and answered by this Bench though not referred to it. Considering that the question arises in various cases pending in courts all over the country, we permitted the counsel to address us on that question.*

That question is whether in the light of the decision in Sunder, the awardee/decree-holder would be entitled to claim interest on solatium in execution though it is not specifically granted by the decree. It is well settled that an execution court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negatived either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate court, the execution court will have necessarily to reject the claim for interest on solatium based on Sunder on the ground that the execution court cannot go behind the decree. But if the award of the Reference Court or that of the appellate court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the Reference Court or the appellate court, and merely interest on compensation is awarded, then it would be open to the execution court to apply the ratio of ***Sunder*** *and say that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution. Otherwise, not. We also clarify that such interest on solatium can be claimed only in pending executions and not in closed executions and the execution court will be entitled to permit its recovery from the date of the judgment in* ***Sunder*** *(19.09.2001) and not for any prior period. We also clarify that this will not entail any reappropriation or fresh appropriation by the decree holder. This we have indicated by way of clarification also in exercise of our power under Articles 141 and 142 of the Constitution of India with a view to avoid multiplicity of litigation on this question."*

In view of the decision of the Supreme Court in **Gurpreet Singh's** case, the order passed by the court below is liable to be set aside . Accordingly, the Civil Revision Petition is allowed. The order impugned is set aside. The court below is directed to pass orders in accordance with the dictum laid down by the Supreme Court in **Gurpreet Singh's** case.

K.T. SANKARAN,
JUDGE.

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